



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

**[EPA-HQ-OAR-2021-0742; FRL-8425-01-OAR]**

**RIN 2060-AV32**

### **Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is proposing three actions pursuant to section 181(b)(2) of the Clean Air Act (CAA) related to the attainment date for 31 areas classified as “Marginal” nonattainment for the 2015 ozone National Ambient Air Quality Standards (NAAQS). First, the Agency is proposing to determine that six areas attained the standard by the applicable August 3, 2021, attainment date. Second, the Agency is proposing to grant a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area. Third, the Agency is proposing to determine that 24 areas failed to attain the standard by their applicable attainment date and. The effect of failing to attain by the attainment date is that such areas will be reclassified by operation of law to “Moderate” upon the effective date of the final reclassification notice. Consequently, the responsible state air agencies must submit state implementation plan (SIP) revisions required to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS. The EPA proposes deadlines for submission of those SIP revisions and implementation of the related control requirements. This action, when finalized, will fulfill the EPA’s statutory obligation to determine whether ozone nonattainment areas attained the NAAQS by the attainment date and to publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and identifying the

reclassification. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as “Serious” for the 2008 ozone NAAQS attained the standard by the applicable attainment date of July 20, 2021 (*see* Docket ID EPA-HQ-OAR-2021-0741).

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Virtual public hearing:* The virtual hearing will be held on **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2021-0742, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).  
Follow the online instructions for submitting comments.
- E-mail: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2021-0742 in the subject line of the message.
- Fax: (202) 566-9744.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.  
The Docket Center’s hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, *see* the “Public Participation” heading of the

**SUPPLEMENTARY INFORMATION** section of this notice. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

*Submitting Confidential Business Information (CBI).* Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Our preferred method to receive CBI is for it to be transmitted to electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office using the email address, [oaqpscbi@epa.gov](mailto:oaqpscbi@epa.gov), and should include clear CBI markings as described earlier. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email [oaqpscbi@epa.gov](mailto:oaqpscbi@epa.gov) to request a file transfer link. If sending CBI

information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2021-0742. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

*Virtual public hearing.* The virtual hearing will be held on **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The hearing will be held in three sessions: 9:00 am to noon (Eastern time), 1:00 p.m. to 3:00 p.m. (Eastern time), and 6:00 p.m. to 8:00 p.m. (Eastern time). We invite the public to register to speak using <https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0> or (919) 541-0641. The EPA will confirm your approximate speaking time by **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and we will post a list of registered speakers in approximate speaking order at: <https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0>. If we reach a point in any session where all present, registered speakers have been called on and no one else wishes to provide testimony we will adjourn that session early. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

**FOR FURTHER INFORMATION CONTACT:** For information about this proposed rule, contact Emily Millar, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; telephone number: (919) 541-2619; email address: [millar.emily@epa.gov](mailto:millar.emily@epa.gov); or Robert Lingard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C539-01 Research Triangle Park, NC 27709; by telephone number: (919) 541-5272; email address: [lingard.robert@epa.gov](mailto:lingard.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Participation in virtual public hearing.* Because of current Centers for Disease Control and Prevention recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, the EPA cannot hold in-person public meetings at this time.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this notice in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, individuals may use the online registration form available via the EPA's 2015 Ozone National Ambient Air Quality Standards (NAAQS) Nonattainment Actions web page for this hearing (<https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0>) or contact Pam Long at (919) 541-0641 or [long.pam@epa.gov](mailto:long.pam@epa.gov). The last day to pre-register to speak at the hearing will be **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. On **[INSERT DATE 24 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Pam Long at [long.pam@epa.gov](mailto:long.pam@epa.gov). The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during

the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing is posted online at <https://www.epa.gov/ground-level-ozone-pollution/proposed-determinations-attainment-attainment-date-extensions-0>. While the EPA expects the hearing to go forward as set forth previously, please monitor our website or contact Pam Long at (919) 541-0641 or [long.pam@epa.gov](mailto:long.pam@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

A Spanish interpreter will be provided. If you require the services of an interpreter for any language other than Spanish or special accommodations such as audio description, please pre-register for the hearing with Pam Long and describe your needs by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA may not be able to arrange accommodations without advanced notice.

Throughout this document “we,” “us,” or “our” means the EPA.

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## **I. Overview and Basis of Proposal**

### *A. Overview of Proposal*

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (*see* CAA section 181(b)(2)). For a concentration-based standard, such as the 2015 ozone NAAQS,<sup>1</sup> a determination of attainment is based on a nonattainment area's design value (DV).<sup>2</sup>

The 2015 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.070 parts per million (ppm). For areas classified as Marginal nonattainment for the 2015 ozone NAAQS, the attainment date was August 3, 2021, except for the San Antonio, Texas area that had an attainment date of September 24, 2021.<sup>3</sup> Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.*, December 31, 2020, in the case of Marginal nonattainment areas for the 2015 ozone NAAQS). As such, the EPA's proposed determinations for each area are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2018, 2019, and 2020.

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<sup>1</sup> Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as "the 2015 ozone NAAQS" or as "the standard."

<sup>2</sup> A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

<sup>3</sup> For general purposes, further references to the 2015 ozone NAAQS Marginal area attainment date in this notice will indicate August 3, 2021, except where otherwise indicated.

This proposed action addresses 31 of the 40 nonattainment areas that were classified as Marginal for the 2015 ozone NAAQS as of the Marginal area attainment date of August 3, 2021.<sup>4,5</sup> The remaining nine areas will be addressed in separate actions, as follows:

(1) The Imperial County, California area is not included in this action. The EPA received the CAA section 179B(b) demonstration from the California Air Resources Board on August 16, 2021, for the Imperial County nonattainment area.<sup>6</sup> Actions taken by the EPA on the demonstration may affect a determination of attainment by the attainment date for the area and at this time the EPA is still assessing the merits of the state's submission.

(2) The El Paso-Las Cruces, Texas-New Mexico, Marginal nonattainment area is not included in this proposed action. On November 30, 2021, the EPA completed its response to the D.C. Circuit Court's remand of certain air quality designations for the 2015 Ozone NAAQS by expanding its initial designations for the Doña Ana County (Sunland Park Area), New Mexico nonattainment area. The nonattainment area now includes all of El Paso County, Texas, and has been renamed the El Paso-Las Cruces, Texas-New Mexico nonattainment area, with an attainment date of August 3, 2021, applying to the entire area. The State of New Mexico submitted a CAA section 179B(b) demonstration for the Doña Ana County (Sunland Park)

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<sup>4</sup> Two Marginal nonattainment areas have been redesignated to maintenance for the 2015 ozone NAAQS. Columbus, Ohio (84 FR 43508, August 21, 2019) and Door County, Wisconsin (85 FR 35377, June 10, 2020). See Section II.C of this notice for additional information regarding EPA's designation and redesignation actions for Door County.

<sup>5</sup> In separate rulemakings, the EPA is proposing to redesignate the following Marginal nonattainment areas to attainment for the 2015 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021: Manitowoc County, WI (87 FR 5438, February 1, 2022); Ohio portion of Cincinnati, OH-KY (87 FR 7978, February 11, 2022); Door County-Revised, WI (87 FR 12020, March 3, 2022); and Detroit, MI (87 FR 14210, March 14, 2022). If any of these areas is fully redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for the area.

<sup>6</sup> CAA section 179B(b) provides that where a state demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States, that area shall not be subject to the mandatory reclassification provision, CAA section 181(b)(2). Note that the statute cites 42 U.S.C. 7511(a)(2), but that provision establishes ozone attainment deadlines for severe areas under the 1-hour standard. The EPA has long interpreted the citation in CAA section 179B(b) to be a scrivener's error that was supposed to refer to 42 U.S.C. 7511(b)(2), which refers to consequences for failure to attain by the attainment date.



nonattainment area on June 3, 2021. Texas Commission on Environmental Quality (TCEQ) submitted a CAA section 179B(b) demonstration for the El Paso County, Texas, nonattainment area on February 28, 2022. At this time, the EPA is still assessing the merits of each state's submission and plans to address the attainment status of the El Paso-Las Cruces, Texas-New Mexico nonattainment area, including considering each submitted CAA section 179B(b) demonstrations from both states.

(3) The Las Vegas, Nevada nonattainment area is not included in this action. The Clark County Department of Environment and Sustainability (CCDES) has submitted a number of exceptional events (EE) demonstrations for the Las Vegas, Nevada area. Specifically, on July 1, 2021, the Clark County Department of Environment and Sustainability (CCDES) submitted EE demonstrations for 2 days in 2018 and 6 days in 2020 with exceedances of the standard. On September 2, 2021, the CCDES submitted additional EE demonstrations for 13 days in 2018 and for 7 days in 2020. The EPA's concurrence decision on this demonstration may affect determinations of attainment by the attainment date for this area.<sup>7</sup> The EE initial notification, EE demonstration, and the EPA's response to the initial notification are provided in the docket for this rulemaking.

(4) The Butte County, Calaveras County, San Luis Obispo, Sutter Buttes, Tuolumne County, and Tuscan Buttes County nonattainment areas in California are not included in this action. On September 3, 2021, the California Air Resources Board (CARB) submitted EE demonstrations for the San Luis Obispo area for five days with exceedances of the standard in 2018, and on September 17, 2021, CARB submitted EE demonstrations for multiple days in 2018 with exceedances of the standard in the Calaveras County, Butte County, Tuolumne County, Sutter Buttes, and Tuscan Buttes areas. Specifically, CARB submitted demonstrations

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<sup>7</sup> CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through a process established in regulation to be an exceptional event.

for eight exceedances in 2018 for the Calaveras County area, 11 exceedances in 2018 for the Butte County area, 11 exceedances in 2018 for the Tuolumne County area, 9 exceedances in 2018 for the Sutter Buttes area, and 9 exceedances in 2018 for the Tuscan Buttes area. In addition, on November 18, 2021, CARB submitted EE demonstrations for multiple days in 2020 with exceedances of the standard in the Tuolumne County and Sutter Buttes areas, and on December 8, 2021, CARB submitted EE demonstrations for multiple days in 2020 with exceedances of the standard in the San Luis Obispo area. Specifically, CARB submitted demonstrations for three exceedances in 2020 for the Tuolumne County area, two exceedances in 2020 for the Sutter Buttes area, and eight exceedances in 2020 for the San Luis Obispo area. The EPA’s concurrence decision on these demonstrations may affect determinations of attainment by the attainment date for these areas. The EE initial notifications, EE demonstrations, and the EPA’s responses to the initial notifications are provided in the docket for this rulemaking.

Table 1 provides a summary of the DVs and the EPA’s proposed air quality-based determinations for the 31 Marginal areas addressed in this action. Several areas included in this proposed rule are also addressed in a separate rulemaking to determine whether areas classified as Serious for the 2008 ozone NAAQS attained the standard by the applicable attainment date of July 20, 2021.<sup>8</sup>

**Table 1 — 2015 Ozone NAAQS Marginal Nonattainment Area Evaluation Summary**

<b>2015 NAAQS nonattainment area</b>	<b>2018-2020 DV (ppm)</b>	<b>2015 NAAQS attained by the Marginal attainment date</b>	<b>2020 4<sup>th</sup> Highest daily maximum 8-hr average (ppm)</b>	<b>Area failed to attain 2015 NAAQS but state requested 1-year attainment date extension based on 2020 4th highest daily maximum 8-hr average ≤0.070 ppm</b>

<sup>8</sup> Includes the Chicago-Naperville, IL-IN-WI, Dallas-Fort Worth, TX, Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, Greater Connecticut, Connecticut, and Houston-Galveston-Brazoria, Texas areas.

Allegan County, MI	0.073	Failed to Attain	0.076	No
Amador County, CA	0.069	Attained	Not applicable	Not applicable
Atlanta, GA	0.070	Attained	Not applicable	Not applicable
Baltimore, MD	0.072	Failed to Attain	0.069	No
Berrien County, MI	0.072	Failed to Attain	0.078	No
Chicago, IL-IN-WI	0.077	Failed to Attain	0.079	No
Cincinnati, OH-KY	0.074	Failed to Attain	0.071	No
Cleveland, OH	0.074	Failed to Attain	0.075	No
Dallas-Fort Worth, TX	0.076	Failed to Attain	0.077	No
Denver Metro/North Front Range, CO	0.081	Failed to Attain	0.087	No
Detroit, MI	0.072	Failed to Attain	0.074	No
Door County-Revised, WI (Rural Transport Area (RTA))*	0.072	Failed to Attain	0.075	No
Greater Connecticut, CT	0.073	Failed to Attain	0.071	No
Houston-Galveston-Brazoria, TX	0.079	Failed to Attain	0.075	No
Louisville, KY-IN	0.072	Failed to Attain	0.071	No
Manitowoc County, WI	0.070	Attained	Not applicable	Not applicable
Mariposa County, CA	0.079	Failed to Attain	0.091	No
Milwaukee, WI	0.071	Failed to Attain	0.077	No
Muskegon County, MI	0.076	Failed to Attain	0.080	No
Northern Wasatch Front, UT**	0.077	Failed to Attain	0.080	No
Pechanga Band of Luiseño Mission Indians***	0.078	Failed to Attain	0.084	No
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	0.074	Failed to Attain	0.071	No
Phoenix-Mesa, AZ	0.079	Failed to Attain	0.087	No
San Antonio, TX****	0.072	Failed to Attain	0.074	No
San Francisco Bay, CA	0.069	Attained	Not applicable	Not applicable

Sheboygan County, WI	0.075	Failed to Attain	0.076	No
Southern Wasatch Front, UT	0.069	Attained	Not applicable	Not applicable
St. Louis, MO-IL	0.071	Failed to Attain	0.074	No
Uinta Basin, UT	0.076	Failed to Attain	0.066	Yes
Washington, DC-MD-VA	0.071	Failed to Attain	0.065	No <sup>9</sup>
Yuma, AZ	0.068	Attained	Not applicable	Not applicable

\* Door County-Revised, Wisconsin, is an RTA and therefore will remain subject to Marginal area requirements if the EPA finalizes its proposed determination of failure to timely attain and reclassification to Moderate. For more information see Section II.C of this notice.

\*\* On May 28, 2021, the State of Utah submitted a CAA section 179B demonstration for the Northern Wasatch Front nonattainment area that EPA found does not meet the criteria for such a demonstration. For more information, see Section II.C.1.b of this notice.

\*\*\* Concentrations listed are for the Temecula monitor (AQS ID 06-065-0016); quality assurance issues with the data from the Pechanga monitor resulted in the 2018 data year not being appropriate for comparison to the NAAQS, and an invalid 2020 DV per DV calculation requirements contained in 40 CFR part 50, Appendix U, section 4(b). Ozone data collected at the Temecula monitoring site was used in previous regulatory actions and deemed representative of ozone conditions on the Pechanga Reservation. *E.g.*, 80 FR 18120, April 3, 2015, at 18121-18122 (final rule redesignating the Pechanga air quality planning area from nonattainment to attainment for the 1997 ozone NAAQS).

\*\*\*\* On July 13, 2020, the State of Texas submitted a CAA section 179B demonstration for the San Antonio nonattainment area that the EPA found does not meet the criteria for such a demonstration. For more information, see Section II.C.1.b of this notice.

The data used to calculate both the 2018-2020 DVs and the 2020 fourth highest daily maximum 8-hour averages are provided in the technical support document (TSD) which can be found in the docket for this rulemaking.<sup>10</sup>

The EPA proposes to find that the Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona Marginal nonattainment areas attained by the attainment date based on the 2018-2020 DVs presented in Table 1, which do not exceed 0.070 ppm. The EPA is also proposing to grant a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area (Section II.B of this notice). Finally, the EPA is proposing to determine that 24 Marginal areas with

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<sup>10</sup> “Technical Support Document Regarding Ozone Monitoring Data — Determinations of Attainment, 1-Year Attainment Date Extensions, and Reclassifications for Marginal Areas under the 2015 8-Hour Ozone National Ambient Air Quality Standards (NAAQS),” available in the docket for this rulemaking.

2018-2020 DVs greater than 0.070 ppm did not attain by their attainment dates and do not qualify for a 1-year attainment date extension. If the EPA determines that a nonattainment area classified as Marginal failed to attain by the attainment date, CAA section 181(b)(2)(B) requires the EPA to publish the identity of each such area in the **Federal Register** no later than 6 months following the attainment date and identify the reclassification level.

Furthermore, as required under CAA section 181(b)(2)(A), if the EPA finalizes the determinations that these 24 areas failed to attain by their attainment dates, they will be reclassified to Moderate by operation of law. The reclassified areas will then be subject to the Moderate area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2024 (September 24, 2024, for the San Antonio, Texas, area).

Once reclassified as Moderate, the relevant states must submit to the EPA the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Moderate areas<sup>11</sup> established in CAA section 182(b) and in the 2015 Ozone NAAQS SIP Requirements Rule (*see* 83 FR 62998, December 6, 2018). The EPA proposes to establish deadlines for submitting SIP revisions for these reclassified areas, consistent with CAA section 182(i). As discussed in Section II.D. of this notice, the EPA proposes that the new SIP revisions associated with these reclassifications will be due to the EPA by no later than January 1, 2023. Under the CAA and the Tribal Authority Rule (TAR), tribes may, but are not required to, submit implementation plans to the EPA for approval (*see* CAA section 301(d) and 40 CFR part 49). Accordingly, for the Pechanga Band of Luiseño Mission Indians nonattainment area, the Pechanga Tribe would not be required to submit any tribal implementation plan (TIP) revisions applicable to Moderate areas established in CAA section 182(b) and in the 2015 Ozone NAAQS SIP Requirements Rule. Tribes that are part of multi-jurisdictional nonattainment areas are also not required to submit implementation plan revisions applicable to Moderate areas.

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<sup>11</sup> *See* Section II.C of this notice for additional information regarding the Door County-Revised, Wisconsin, area.

*B. What is the background for the proposed actions?*

On October 26, 2015, the EPA issued its final action to revise the NAAQS for ozone to establish a new 8-hour standard (*see* 80 FR 65452, October 26, 2015). In that action, the EPA promulgated identical tighter primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective on August 3, 2018, the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS (*see* 83 FR 25776, June 4, 2018). The EPA later designated the San Antonio, Texas, area as a 2015 ozone NAAQS nonattainment area effective September 24, 2018 (*see* 83 FR 35136, July 25, 2018). In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's DV (*see* 83 FR 10376, May 8, 2018). The EPA established the attainment date for Marginal and Moderate nonattainment areas as 3 years and 6 years, respectively, from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021, and the attainment date for Moderate areas is August 3, 2024 (September 24, 2021, and September 24, 2024, respectively, for the San Antonio, Texas, area).

*C. What is the statutory authority for the proposed actions?*

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181(a)(5), 181(b)(2) and 182(i).

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting

the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas range from "Marginal" to "Extreme." CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations at 40 CFR 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2015 ozone NAAQS. For reclassified areas, CAA section 182(i) provides that the Administrator may adjust applicable deadlines other than attainment dates if such adjustment is necessary or appropriate to assure consistency among the required submissions. Therefore, the EPA is proposing in Section II.D of this notice to adjust the SIP revision and implementation deadlines for newly reclassified Moderate nonattainment areas.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Upon application by any state, the EPA may grant a 1-year extension of the attainment date for qualifying areas (Section II.B of this notice). In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification

applicable to the area's DV as of the determination of failure to attain.<sup>12</sup> Section 181(b)(2)(B) of the CAA requires the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the Marginal nonattainment areas considered in this proposal was February 3, 2022.

Once an area is reclassified, each state that contains a reclassified area is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2024, the Moderate area attainment date for the 2015 ozone NAAQS (September 24, 2024, for the San Antonio, Texas, area). Per CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements "according to the schedules prescribed in connection with such requirements" in CAA section 182(b) for Moderate areas, but the EPA "may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." In Section II.D of this notice, the EPA explains its proposal to adjust such deadlines.

*D. How does the EPA determine whether an area has attained the 2015 ozone standard?*

Under the EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.*, DV) does not exceed 0.070 ppm. When the DV does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. The rounding convention in Appendix P dictates that concentrations shall be reported in "ppm" to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of

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<sup>12</sup> All nonattainment areas named in this notice that failed to attain by the attainment date would be classified to the next higher classification, Moderate. None of the affected areas has a DV that would otherwise place an area in a higher classification (*i.e.*, see CAA section 181(b)(2)(A) reference to Extreme areas).



0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a DV of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.<sup>13</sup> Ambient air quality monitoring data for the 3-year period preceding the attainment date (2018-2020 for the 2015 ozone NAAQS Marginal areas) must meet the data completeness requirements in Appendix U.<sup>14</sup> The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

## **II. What is the EPA proposing and what is the rationale?**

The EPA is proposing this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether 31 Marginal ozone nonattainment areas attained the 2015 ozone NAAQS as of the attainment date of August 3, 2021 (September 24, 2021, for the San Antonio, Texas, area). The EPA evaluated air quality monitoring data submitted by the appropriate state, local, and tribal air agencies to determine the attainment status of the 31 areas as of their applicable Marginal area attainment dates. This section describes the separate determinations and actions being proposed in this document.

### *A. Determinations of Attainment by the Attainment Date*

The EPA is proposing to determine, in accordance with CAA section 181(b)(2)(A) and the provisions of the 2015 Ozone NAAQS SIP Requirements Rule (40 CFR 51.1303), that the

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<sup>13</sup> The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the Web site at <https://www.epa.gov/aqs>.

<sup>14</sup> See 40 CFR part 50, appendix U, section 4(b).

Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona areas attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, based on their 2018-2020 DV (Table 1).

These proposed determinations of attainment by the attainment date do not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require, among other things, that the states responsible for ensuring attainment and maintenance of the NAAQS have met the applicable requirements under CAA section 110 and part D, and to submit to EPA for approval a maintenance plan to ensure continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

The EPA requests comment on these proposed determinations of attainment by the applicable attainment date for the Atlanta, Georgia; Manitowoc County, Wisconsin; Southern Wasatch Front, Utah; Amador County, California; San Francisco Bay, California; and Yuma, Arizona areas. Further technical analysis supporting these proposed determinations are in the TSD for this proposed rule, which is available in the docket for this rulemaking.

#### *B. Extension of Marginal Area Attainment Date*

##### *1. Summary of proposed action*

By way of letter dated March 29, 2021, the Utah Division of Air Quality (UDAQ) requested an extension of the Uinta Basin area Marginal area attainment date; the letter is provided in the docket for this rulemaking.<sup>15</sup> We propose to grant UDAQ's request and extend the August 3, 2021, Marginal area attainment date to August 3, 2022, for the Uinta Basin area, based on our finding that the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307 and that no other facts or circumstances compel the

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<sup>15</sup> Bird, Bryce, Director, UDAQ. "Request for One-year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area." March 29, 2021.

EPA Administrator to consider information beyond the statutory criteria – *i.e.*, (1) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) for a first attainment date extension, an area’s fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard.<sup>16</sup>

## 2. Proposed action to grant the requested 1-year attainment date extension

Section 181(a)(5) of the CAA provides the EPA the discretion (*i.e.*, “the Administrator may”) to extend an area’s applicable attainment date by 1 additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307.

With respect to the first criterion, the EPA interprets the provision as having been satisfied if a state can demonstrate that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Env’tl. Control v. EPA*, 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act); *see also Vigil v. Leavitt*, 381 F.3d 826, 846 (9th Cir. 2004). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may make a determination as to whether the criterion has been met. *See Delaware*, 895 F.3d at 101-102.

With respect to the second criterion, the EPA has interpreted CAA section 181(a)(5)(B)’s exceedance-based air quality requirement of the extension criteria for purposes of a concentration-based standard like the 2015 8-hour ozone NAAQS (*see* 40 CFR 51.1307). For purposes of the 2015 ozone NAAQS, the EPA has interpreted the air quality criterion of CAA

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<sup>16</sup> The attainment year is the calendar year corresponding with the final ozone season for determining attainment; “attainment year ozone season” is defined as the ozone season immediately preceding a nonattainment area’s maximum attainment date (*see* 40 CFR 51.1300(g)).

section 181(a)(5)(B) to mean that an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard (0.070 ppm).<sup>17</sup>

We have evaluated the information submitted by UDAQ and propose to determine that the area meets the two necessary statutory criteria for the 1-year extension under CAA section 181(a)(5) and 40 CFR 51.1307(a)(1), and that no other facts or circumstances compel the EPA Administrator to consider information beyond the statutory criteria. UDAQ has certified that they have complied with all requirements and commitments pertaining to these areas in their approved implementation plan. Additionally, the fourth highest daily maximum 8-hour average ozone concentration recorded during 2020 for the Uinta Basin was 0.066 ppm, well below the level of the 2015 ozone NAAQS of 0.070 ppm (Table 1 of this notice). The EPA proposes to grant the requested 1-year extension of the August 3, 2021, Marginal area attainment date for the Uinta Basin area.

If we finalize this proposal, on the effective date of the final action the attainment date for the Uinta Basin area would be extended to August 3, 2022. The area would then remain classified as Marginal for the 2015 ozone NAAQS until the EPA either made a determination that the area had failed to attain the NAAQS by the new attainment date, granted a second 1-year attainment date extension, or redesignated the area to attainment. The EPA solicits comments on our proposal to grant the requested 1-year attainment date extension for the Uinta Basin Marginal nonattainment area, and whether there are any particular circumstances, such as disproportionate environmental exposure or burdens, that the EPA should consider before granting the request.

### 3. Additional information

In evaluating Utah's request for a 1-year extension of the Marginal attainment date, the EPA considered other facts and circumstances, and we propose to find that these considerations do not weigh against our proposal to grant Utah's request.

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<sup>17</sup> See 40 CFR 51.1307 pertaining to determining eligibility under CAA section 181(a)(5)(B) for the first and the second 1-year attainment date extensions for the 2015 ozone NAAQS.

*i. Ute Tribe support for 1-year extension*

In a letter dated May 25, 2021, the Ute Indian Tribe also requested an attainment date extension for the area.<sup>18</sup> This letter is provided in the docket for this rulemaking. The EPA's proposed extension is based on the request from UDAQ for the entire Uinta Basin area, but we note the tribe's independent support for an attainment date extension. In accordance with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA offered an opportunity for consultation to seek the Tribe's input during the development of this notice.<sup>19,20</sup> The Ute Indian Tribe met with the EPA on October 6, 2021. In this meeting tribal leadership reiterated their support for the emissions controls in EPA's proposed Federal Implementation Plan (FIP) for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray (U&O) Indian Reservation in Utah (U&O FIP)<sup>21</sup> as a way to make regulations related to oil and natural gas more consistent across the basin and urged EPA to finalize the U&O FIP.

*ii. FIP for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the U&O Indian Reservation in Utah (U&O FIP)*

The proposed U&O FIP would require new, modified, and existing oil and natural gas (O&NG) sources on Indian country lands within the U&O Reservation to implement new control requirements. While the FIP is not designed to bring the area into attainment, the EPA expects these emission limits to reduce ozone precursor emissions and improve air quality in the area.

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<sup>18</sup> Chapoose, Shaun, Chairman, Ute Indian Tribe Business Committee. "Request for One Year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area." May 25, 2021.

<sup>19</sup> Daly, Carl, Acting Director, Air and Radiation Division, U.S. EPA Region 8. "Request for One-Year Extension of the 2015 Ozone National Ambient Air Quality Standard Attainment Date for the Uinta Basin Marginal Nonattainment Area and Consultation on the Draft Proposal for the National Determination of Attainment by the Attainment Date." September 10, 2021.

<sup>20</sup> See EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011, <https://www.epa.gov/sites/default/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>.

<sup>21</sup> "Proposed Rule: Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah" (85 FR 3492, January 21, 2020).

The EPA proposed the U&O FIP in January 2020 and is working to finalize it. Most VOC emissions within the Basin are from existing O&NG activity, and most of those O&NG emissions are from existing sources on the U&O Indian Reservation and in the nonattainment area.<sup>22</sup> VOC emissions control requirements for existing O&NG sources currently exist in areas of the Uinta Basin under Utah jurisdiction, but do not exist in the U&O Indian Reservation where most sources are uncontrolled. To this end, we expect the new control requirements in the final U&O FIP to make a meaningful improvement in air quality and address winter ozone exceedances on the reservation, and in the nonattainment area and larger Uinta Basin region.

### *iii. Air quality trends*

As shown in Table 1 of this notice, the Uinta Basin area did not attain the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, based on its final 2018-2020 DV of 0.076 ppm. The Uinta Basin area meets the specific air quality criteria for an initial 1-year extension under 40 CFR 51.1307(a)(1) with an attainment year (2020) fourth highest daily maximum 8-hour average concentration of 0.066 ppm. Preliminary 2021 ozone monitoring data indicate that the area may not attain the 2015 ozone NAAQS by the extended August 3, 2022, attainment date;<sup>23</sup> however, it appears that the area could meet the air quality criteria for a second 1-year extension.<sup>24</sup>

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<sup>22</sup> For the proposed FIP, the EPA estimated, using 2014 emissions inventory data, that of the approximately 10,400 individual existing active O&NG wells in the Uinta Basin, over 7,900 wells, or about 76 percent, were on Indian country lands within the U&O Reservation. Over 6,700 individual O&NG (primarily well sites) were processing fluids from those wells. Additionally, EPA estimated that the majority of the O&NG sources were uncontrolled and over 2,100 of those sources would be subject to the substantive VOC emissions control requirements of a final and effective U&O FIP (*see* 85 FR 3500-3501 and 3512). The draft final FIP is being analyzed using 2017 emissions inventory data, so the impacts of the final rule may differ from the numbers of sources used to analyze the proposed FIP.

<sup>23</sup> As of February 9, 2022, the Uinta Basin area's preliminary 2019-2021 DV was 0.078 ppm and the preliminary 2021 fourth highest daily maximum 8-hour value was 0.072 ppm, available at <https://www.epa.gov/outdoor-air-quality-data/download-daily-data>.

<sup>24</sup> To qualify for a second 1-year extension, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 0.070 ppm or less (40 CFR 51.1307(a)(2)). If the preliminary 2021 ozone data are certified, then the fourth highest daily maximum 8-hour value, averaged over 2020 and 2021, would be 0.069 ppm.

The Uinta Basin nonattainment area has a wintertime ozone problem, which means that violating ozone concentrations are driven by local ozone precursor emissions from existing O&NG sources and are dependent on stagnant winter conditions associated with snow cover and strong temperature inversions. These winter meteorological conditions occur periodically,<sup>25</sup> as evidenced by elevated fourth highest daily maximum average ozone 8-hour concentrations of 0.103 ppm (2017) and 0.098 ppm (2019), which were measured in Indian country near Ouray, Utah.<sup>26</sup> The Uinta Basin area could potentially attain the 2015 ozone standard by a second extended attainment date (August 3, 2023) if the fourth highest daily maximum 8-hour average concentrations for 2021 and 2022 remain consistent with the final value for 2020 (0.066 ppm), *e.g.*, 0.072 ppm (2021 preliminary) and 0.072 ppm (2022 hypothetical) that, when averaged with the 2020 value, would result in an attaining 2020-2022 DV of 0.070 ppm.

*iv. Environmental justice*

Where the statute has provided the Administrator a discretionary authority in the attainment date extension provisions, we think it is reasonable to consider the existing environmental burden in the area in question, and what impact our action may have on that burden. Consideration of the existing pollution burden already borne by the population that will be impacted by our action is a relevant factor of reasoned decisionmaking. The EPA therefore performed screening analyses to better understand the pollution burdens borne by the population that will be affected by the requested extension in order to fully understand the potential public health ramifications of the extension. That analysis did not indicate disproportionate pollution exposure or burdens for populations in the Uinta Basin area compared to the wider U.S. population.

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<sup>25</sup> Some winters may have one or more multi-day episodes with conducive meteorological conditions while in other years these conditions may not occur at all.

<sup>26</sup> We use the fourth highest daily maximum average ozone 8-hour concentrations here for illustration, but these values, by definition, are not the highest values recorded for a monitoring site. Values presented are for AQS Site Number 490472003; *see* Table 5 of “o3\_designvalues\_2017\_2019\_final\_05\_26\_20.xlsx” available at <https://www.epa.gov/air-trends/air-quality-design-values>.

The EPA's inquiry is also consistent with multiple executive orders addressing environmental justice as well as an April 7, 2021, directive by the EPA Administrator.<sup>27,28</sup> In that directive, the Administrator instructed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.<sup>29</sup>

### *Screening Analyses*

To conduct the screening analyses, we used EJSCREEN, an EJ mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.<sup>30</sup> The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified "buffer" area that covers multiple CBGs.<sup>31</sup> An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ. We also examined ozone design value data for the Uinta Basin area.<sup>32</sup>

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<sup>27</sup> Message from the EPA Administrator, Our Commitment to Environmental Justice (issued April 7, 2021) at <https://www.epa.gov/sites/production/files/2021-04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf>.

<sup>28</sup> See EO 13985 ("Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," issued January 20, 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> and 86 FR 7009 (January 25, 2021)) and EO 12898 ("Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," issued February 11, 1994, available at [https://www.epa.gov/sites/production/files/2015-02/documents/exec\\_order\\_12898.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf) and 59 FR 7629 (February 16, 1994)).

<sup>29</sup> The EPA has defined environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

<sup>30</sup> The EJ SCREEN tool is available at <https://www.epa.gov/ejscreen>.

<sup>31</sup> See <https://www.census.gov/programs-surveys/geography/about/glossary.html>.

<sup>32</sup> The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion, ppb) and was not used in our EJ analyses because this metric is not informative of peak ozone concentrations for this area, which are instead



With respect to the Uinta Basin, the EPA conducted an EJSCREEN analysis for the two counties (Duchesne and Uintah) that encompass the entire Uinta Basin nonattainment area, as well as analyses of five-kilometer buffers around the five monitors inside the nonattainment area that showed a fourth highest daily maximum value that exceeded the ozone NAAQS between 2018 and 2020.<sup>33</sup> The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN,<sup>34</sup> either between the monitor site buffer areas and the 2-county (Duchesne and Uintah) area, or relative to the U.S. as a whole. (The full results of our analyses are provided in the docket for this rulemaking.)

The EPA considered the information described above in evaluating Utah's request for a 1-year extension of the Marginal attainment date, and we propose to find that this information does not weigh against our proposal to grant Utah's request. Again, we seek comment on our proposal to grant the attainment date extension request for the Uinta Basin, Utah, 2015 ozone NAAQS nonattainment area.

### *C. Determinations of Failure to Attain and Reclassification*

The EPA is proposing to determine that 24 Marginal nonattainment areas failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2021 (September 24, 2021, for the San Antonio area). The 24 areas are: Allegan County, Michigan; Baltimore, Maryland; Berrien County, Michigan; Chicago, IL-IN-WI; Cincinnati, OH-KY; Cleveland, Ohio; Dallas-Fort Worth, Texas; Denver Metro/North Front Range, Colorado; Detroit, Michigan; Door County-Revised, Wisconsin; Greater Connecticut, Connecticut; Houston-Galveston-Brazoria, Texas; Louisville, KY-IN; Mariposa, California; Milwaukee, Wisconsin; Muskegon County, Michigan;

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represented here by the design value metric. Ozone design values are the basis of attainment determinations in this proposed action, and we consider it a more informative indicator of pollution burden from ozone in the Uinta Basin area.

<sup>33</sup> AQS Site IDs: 49-013-0002, 49-013-7011, 49-047-2002, 49-047-2003, 49-047-7022

<sup>34</sup> EJSCREEN examines multiple environmental indicators including, *e.g.*, particulate matter, traffic proximity and volume, lead paint in housing, and proximity scores for Superfund, RMP and hazardous waste facilities.

North Wasatch Front, Utah; Pechanga Band of Luiseño Mission Indians; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE; Phoenix-Mesa, Arizona; San Antonio, Texas; Sheboygan County, Wisconsin; St. Louis, Missouri; and Washington DC-MD-VA. These areas are not eligible for a 1-year attainment date extension and because they do not meet the extension criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307. The areas' ozone DVs for 2018-2020 are shown in Table 1.

We note that the State of Texas and the State of Utah submitted CAA section 179B demonstrations for the San Antonio and Northern Wasatch Front areas, respectively. In this action, the EPA is proposing to disapprove these CAA section 179B demonstrations and to determine that these areas failed to attain. The basis for the proposed disapprovals is explained in more detail in Section II.C.1 of this notice.

If we finalize our action as proposed, each of these areas will be reclassified as Moderate nonattainment for the 2015 ozone NAAQS, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1303. These areas would then be required to attain the standard “as expeditiously as practicable” but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024 (September 24, 2024, for the San Antonio, Texas, area). If an area attains the 2015 ozone NAAQS, the relevant state may seek a Clean Data Determination, under which certain attainment planning requirements for the area would be suspended under 40 CFR 51.1318. If an area meets all the other applicable statutory criteria, the state with an attaining nonattainment area could also seek a redesignation to attainment.<sup>35</sup>

On July 14, 2021, the EPA finalized the Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards action which expanded the boundaries of the

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<sup>35</sup> The EPA’s Clean Data Policy, as codified for the 2015 ozone NAAQS at 40 CFR 51.1318, suspends the requirements for states to submit certain attainment planning SIPs such as the attainment demonstrations, including RACM, RFP, and contingency measures for so long as an area continues to attain the standard.

Door County, Wisconsin, nonattainment area (*see* 86 FR 31438, 31444, July 14, 2021). We recognize that the original Door County area (comprising only Newport State Park) was redesignated to attainment in 2020 (*see* 85 FR 35377, June 10, 2020), prior to the EPA revising the boundaries of the nonattainment area to respond to the court’s remand in *Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020). Given the different implementation deadlines for the different portions of Door County, the EPA has labeled the original area as “Door County, WI” and the expanded area as “Door County-Revised, WI” in the amended 40 CFR part 81 tables for the revised designations. In this current action, the EPA is proposing to reclassify the Door County-Revised, Wisconsin, area from Marginal to Moderate for the 2015 ozone NAAQS; the EPA is not proposing any action related to the Door County, Wisconsin, area because it is no longer subject to the attainment determination requirements of CAA section 181(b)(2) due to the fact that it has been redesignated to attainment (*i.e.*, it is a maintenance area for the 2008 ozone NAAQS). However, because the Door County-Revised, Wisconsin, area is also a Rural Transport Area (RTA) under CAA section 182(h), and the EPA does not have information indicating that the bases for treating the Door County-Revised, Wisconsin, area as an RTA under CAA section 182(h) have changed, Wisconsin would not be required to submit Moderate area SIP revisions for the area, if this proposal is finalized.<sup>36,37</sup>

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<sup>36</sup> Section 182(h) of the CAA allows the EPA to determine that a designated nonattainment area can be treated as an RTA if: the area does not contain emission sources that make significant contribution to monitored ozone concentration in the area or other areas; and the area does not include and is not adjacent to a Metropolitan Statistical Area. The General Preamble further states that “Any RTA that fails to meet the Marginal area attainment deadlines is subject to bump-up to the appropriate higher nonattainment status. However, if the area still qualifies as an RTA, although the area will be subject to the attainment date for the higher classification, it remains subject only to the submittal and implementation requirements for Marginal areas. If it is found that the area no longer qualifies as an RTA, the area will be treated as the higher classified area for SIP requirements as well.” (57 FR 13498, April 16, 1992).

<sup>37</sup> In a separate rulemaking, the EPA is proposing to redesignate the Door County-Revised, WI Marginal nonattainment area to attainment for the 2015 ozone NAAQS based upon complete, quality-assured, and certified ozone monitoring data from calendar years 2019, 2020, and 2021 (87 FR 12020, March 3, 2022). If this area is fully redesignated prior to EPA finalizing this proposal, EPA would not finalize its proposed action for the area.

The EPA requests comment on our proposal to determine that these 24 nonattainment areas did not attain the 2015 ozone NAAQS by the Marginal area attainment date.

#### 1. International transport and requirements for CAA section 179B

CAA section 179B(b) provides that where a state demonstrates to the Administrator's satisfaction that an ozone nonattainment area would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States, that area shall not be subject to the mandatory reclassification provision, CAA section 181(b)(2). The State of Texas submitted a CAA section 179B demonstration for the San Antonio nonattainment area on July 13, 2020. Additionally, the State of Utah submitted a CAA section 179B demonstration for the Northern Wasatch Front nonattainment area on May 28, 2021. As described in this subsection, the EPA is proposing to disapprove the demonstrations for San Antonio and Northern Wasatch Front, resulting in the proposed determinations that both areas failed to timely attain the 2015 ozone NAAQS discussed previously in this section.

##### a. Background for the proposed actions

Anthropogenic emission sources outside of the U.S. can affect to varying degrees the ability of some air agencies to attain and maintain the 2015 ozone NAAQS in areas within their jurisdiction. In a nonattainment area affected by international emissions, an air agency may elect under CAA section 179B<sup>38</sup> to develop and submit to the EPA a demonstration intended to show that a nonattainment area would attain, or would have attained, the relevant NAAQS by the applicable statutory attainment date “but for” emissions emanating from outside the U.S. Under CAA section 179B, the EPA evaluates such demonstrations, and if it agrees with the air agency's demonstration, the EPA considers the impacts of international emissions in taking specific regulatory actions.

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<sup>38</sup> All references to CAA section 179B are to 42 U.S.C. § 7509a. International border areas, as added Pub. L. No. 101-549, title VIII, § 818, 104 Stat. 2697 (November 15, 1990). See the docket for this rulemaking for the full statutory text.

CAA section 179B provides the EPA with authority to consider impacts from international emissions in two contexts: (1) a “prospective” state demonstration submitted as part of an attainment plan, which the EPA considers when determining whether the SIP adequately demonstrates that a nonattainment area will attain the NAAQS by its future attainment date (see CAA section 179B(a)); or (2) a “retrospective” state demonstration, which the EPA considers after the attainment date in determining whether a nonattainment area attained the NAAQS by the attainment date (*see* CAA section 179B(b)–(d)).

First, CAA section 179B(a) provides that, “[N]otwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if (1) such plan or revision meets all the requirements applicable to it...other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and (2) the submitting state establishes to the satisfaction of the Administrator that the implementation plan of such state *would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date ...* but for emissions emanating from outside of the United States,” (emphasis added). The EPA refers to CAA section 179B(a) demonstrations as “prospective” demonstrations because they are intended to assess future air quality, taking into consideration the impact of international emissions. Thus, if EPA approves a prospective demonstration, the state is relieved from the requirement to submit to the EPA a demonstration showing that the nonattainment area will attain the NAAQS by the attainment date.<sup>39</sup>

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<sup>39</sup> Section 182(a) of the CAA, which describes nonattainment area requirements for ozone Marginal areas, states that the requirements of section 182(a) “shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.” In other words, there is no prospective relief that can be granted by the EPA under section 179B(a) for ozone nonattainment areas classified as Marginal.

Second, CAA section 179B(b) provides that, for ozone nonattainment areas, “[n]otwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that ... such State *would have attained* the national ambient air quality standard ... by the applicable attainment date but for emissions emanating from outside of the United States,” (emphasis added) shall not be subject to reclassification to a higher classification category by operation of law, as otherwise required in CAA section 181(b)(2).<sup>40</sup> The EPA refers to demonstrations developed under CAA section 179B(b) as “retrospective” demonstrations because they involve analyses of past air quality (*e.g.*, air quality data from the years to be evaluated for determining whether an area attained by the attainment date). Thus, an EPA-approved retrospective demonstration provides relief from reclassification that would have resulted from the EPA determining that the area failed to attain the NAAQS by the relevant attainment date.

Irrespective of developing and submitting a prospective or retrospective demonstration, states still have to meet all nonattainment area requirements applicable for the relevant NAAQS and area classification. The 2015 ozone NAAQS SIP Requirements Rule did not include regulatory requirements specific to CAA section 179B but did provide guidance on certain points. In the rule, the EPA confirmed that: (1) only areas classified Moderate and higher must show that they have implemented reasonably available control measures and reasonably available control technology (RACM/RACT); (2) CAA section 179B demonstrations are not geographically limited to nonattainment areas adjoining an international border; and, (3) a state demonstration prepared under CAA section 179B can consider emissions emanating from sources in North America (*i.e.*, Canada or Mexico) or sources on other continents (*see* 86 FR 62998, 63009, December 6, 2018). In that rule, the EPA encouraged air agencies to consult with

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<sup>40</sup> The EPA’s longstanding view is that CAA section 179B(b) contains an erroneous reference to section 181(a)(2), and that Congress actually intended to refer here to section 181(b)(2), which addresses reclassification requirements for ozone nonattainment areas. *See* “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13,498, 13,569 n.41 (April 16, 1992).

the appropriate EPA regional office to determine technical requirements for the CAA section 179B demonstrations. In addition, the EPA noted its development of supplementary technical information and guidance to assist air agencies in preparing demonstrations that meet the requirements of CAA section 179B.

The EPA issued more detailed guidance regarding CAA section 179B on December 18, 2020, that includes recommendations to assist state, local, and tribal air agencies that intend to develop a CAA section 179B demonstration.<sup>41</sup> The guidance describes and provides examples of the kinds of information and analyses that the EPA recommends air agencies consider for inclusion in a CAA section 179B demonstration.

In the guidance, the EPA confirmed that while approval of a CAA section 179B demonstration provides specific forms of regulatory relief for air agencies, the EPA's approval does not relieve air agencies from obligations to meet the remaining applicable planning or emission reduction requirements in the CAA. It also does not provide a basis either for excluding air monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment, or for redesignating an area to attainment. If an air agency is contemplating a CAA section 179B demonstration in either the CAA section 179B(a) "prospective" context or the CAA section 179B(b) "retrospective" context, the EPA encourages communication throughout the demonstration development and submission process, along the lines of these basic steps: (1) the air agency contacts its EPA Regional office to discuss CAA section 179B regulatory interests and conceptual model; (2) the air agency begins gathering information and developing analyses for a demonstration; (3) the air agency submits a draft CAA section 179B demonstration to its EPA Regional office for review and discussion; and (4) the air agency submits its final CAA section 179B demonstration to the EPA. After that process is

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<sup>41</sup> "Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions" issued on December 18, 2020; available at [https://www.epa.gov/sites/default/files/2020-12/documents/final\\_caa\\_179b\\_guidance\\_december\\_2020\\_with\\_disclaimer\\_ogc.pdf](https://www.epa.gov/sites/default/files/2020-12/documents/final_caa_179b_guidance_december_2020_with_disclaimer_ogc.pdf). The EPA also issued a notice of availability in the **Federal Register** on January 7, 2021 (86 FR 1107).

complete, the EPA makes a determination as to the sufficiency of the demonstration after a public notice and comment process. EPA may act on a prospective demonstration when taking action on an area's attainment plan. For a retrospective demonstration, EPA may determine its adequacy when taking action to determine whether the area attained by the attainment date and is subject to reclassification.

The EPA's consideration of the CAA section 179B demonstrations submitted by states in connection with reclassification of ozone nonattainment areas, as is relevant to this action, is governed by CAA section 179B(b).<sup>42</sup> Pursuant to that provision, the state must establish "to the satisfaction of the Administrator that, with respect to [the relevant] ozone nonattainment area in such State, such State would have attained the [2015 ozone NAAQS] by the applicable attainment date, but for emissions emanating from outside of the United States..." Because the wording in CAA section 179B(b) is in the past tense, it is reasonable for EPA to conclude that such demonstrations should be retrospective in nature. In other words, the demonstration should include analyses showing that the air quality data on specific days in the time period used to assess attainment were affected by international emissions to an extent that prevented the area from attaining the standard by the attainment date. By definition, states can only make such a demonstration after air quality data collected pursuant to Federal reference or equivalent monitoring methods are certified and indicate that the area failed to attain by the attainment date. Where the EPA approves a state's CAA section 179B(b) retrospective demonstration, the area retains its nonattainment designation and is still subject to all applicable requirements for the area's current classification, but is not subject to the applicable requirements for any higher classification.

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<sup>42</sup> The regulatory relief a state would receive from a satisfactory prospective CAA section 179B(a) demonstration is limited to approval of an attainment plan that does not demonstrate attainment and maintenance of the relevant NAAQS, but meets all other applicable requirements. CAA section 179B(a) is not germane to this proposal.



The CAA does not specify what technical analyses would be sufficient to demonstrate “to the satisfaction of the Administrator” that a “State would have attained the [NAAQS for the pollutant in question] by the applicable attainment date, but for” international emissions. The EPA recognizes that the relationship between certain NAAQS exceedances and associated international transport is clearer in some cases than in others. The following characteristics would suggest the need for a more detailed demonstration with additional evidence: (1) affected monitors are not located near an international border; (2) specific international sources and/or their contributing emissions are not identified or are difficult to identify; (3) exceedances on internationally influenced days are in the range of typical exceedances attributable to local sources; and, (4) exceedances occurred in association with other processes and sources of pollutants, or on days where meteorological conditions were conducive to local pollutant formation (*e.g.*, for ozone, clear skies and elevated temperatures). Therefore, CAA section 179B demonstrations for non-border areas may involve additional technical rigor, analyses and resources compared to demonstrations for border areas.

Given the extensive number of technical factors and meteorological conditions that can affect international transport of air pollution, and the lack of specific guidance in the Act, the EPA has decided to evaluate CAA section 179B demonstrations based on the weight of evidence of all information and analyses provided by the air agency. The appropriate level of supporting documentation will vary on a case-by-case basis depending on the nature and severity of international influence, as well as the factors identified above. The EPA considers and qualitatively weighs all evidence based on its relevance to CAA section 179B and the nature of international contributions as described in the demonstration’s conceptual model. Every demonstration should include fact-specific analyses tailored to the nonattainment area in question. When a CAA section 179B demonstration shows that international contributions are larger than domestic contributions, the weight of evidence will be more compelling than if the demonstration shows domestic contributions exceeding international contributions. In contrast,

when a CAA section 179B demonstration shows that international emissions have a lower contribution to ozone concentrations than domestic emissions, and/or international transport is not significantly different on local exceedance days compared to non-exceedance days, then the weight of evidence will not be supportive of a conclusion that a nonattainment area would attain or would have attained the relevant NAAQS by the statutory attainment date “but for” emissions emanating from outside the U.S.

The EPA also considers in evaluating a CAA section 179B demonstration what measures an air agency has implemented to control local emissions. At a minimum, states are still subject to all applicable requirements based on the requirements of that area’s classification. For EPA to concur with a state’s CAA section 179B retrospective demonstration, the weight of evidence should show the area could not attain with on-the-books measures and potential reductions associated with required controls for that particular NAAQS and classification that are to be implemented by the attainment date. Because CAA section 179B does not relieve an air agency of its planning or control obligations, the air agency should show that it has implemented all required emissions controls at the local level as part of its demonstration.

b. Summary of the 2015 ozone NAAQS CAA section 179B demonstrations submitted to the EPA and proposed actions

As part of meeting its duty to determine whether the San Antonio and Northern Wasatch Front areas attained the 2015 ozone NAAQS by the Marginal attainment date, the EPA has evaluated the CAA section 179B demonstrations submitted by Texas and Utah for these areas. The states submitted the CAA section 179B demonstrations to support claims that the San Antonio and Northern Wasatch Front nonattainment areas would have attained the 2015 ozone NAAQS by the applicable attainment date, but for emissions emanating from outside of the United States. If the EPA were to approve these demonstrations, then the EPA would not reclassify these areas from Marginal to Moderate.

After a thorough review, the EPA is proposing to disapprove the CAA section 179B demonstrations for both areas. The San Antonio, Texas, nonattainment area is a non-border area for which the submitted technical analysis and weight of evidence of multiple factors (for example, whether international contributions are large in comparison to domestic contributions) does not establish that the area would have attained but for international transport impacts. Similarly, the submitted demonstration for the Northern Wasatch Front, Utah, nonattainment area – a non-border area – does not establish that the area would have attained but for international transport impacts. The full rationale supporting each proposed disapproval is included in the related technical support documents provided in the docket for this rulemaking.

The EPA solicits comment on each of these proposed CAA section 179B demonstration disapprovals. Once again, the EPA also requests comment on its proposal to determine that the San Antonio and Northern Wasatch Front areas – as well as the other 22 nonattainment areas referenced in Section II.C. of this notice – did not attain the 2015 ozone NAAQS by the Marginal area attainment date.

#### *D. Moderate Area SIP Revisions*

Marginal nonattainment areas that the EPA has determined failed to attain the 2015 ozone NAAQS by the attainment date will be reclassified as Moderate by operation of law upon the effective date of the final reclassification rule. Each responsible state air agency must submit SIP revisions that satisfy the general air quality planning requirements under CAA section 172(c) and the ozone specific requirements for Moderate nonattainment areas under CAA section 182(b), as interpreted and described in EPA's implementing regulations for the 2015 ozone NAAQS (*see* 40 CFR 51.1300 *et seq.*). This section describes the required Moderate area submission elements, provides additional discussion of the vehicle inspection and maintenance program requirement, and proposes submission and implementation deadlines for Moderate area SIP revisions required by reclassification.

As discussed in Section II.C. of this notice, Wisconsin would not be required to submit Moderate area SIP revisions for the Door County-Revised, Wisconsin area if this proposal is finalized. As noted previously, for the Pechanga Band of Luiseño Mission Indians nonattainment area, the Pechanga Tribe would not be required to submit a Moderate area TIP revision. Tribes that are part of multi-jurisdictional nonattainment areas would also not be required to submit implementation plan revisions applicable to Moderate areas.

#### 1. Required Submission Elements

SIP requirements that apply to Moderate areas are cumulative of CAA requirements for the Marginal classification and include additional Moderate area requirements as interpreted and described in the final SIP Requirements Rule for the 2015 ozone NAAQS (*see* CAA sections 172(c)(1) and 182(a) and (b), and 40 CFR 51.1300 *et seq.*). We are providing additional discussion in the following sections for these Moderate area requirements: (a) RACM and RACT and (b) Vehicle Inspection and Maintenance.

##### a. RACM and RACT

States with jurisdiction over all or a portion of an ozone nonattainment area classified as Moderate or higher must provide an analysis of — and adopt all — RACM, including RACT, needed for purposes of meeting RFP and expeditiously attaining the ozone NAAQS in that area. The EPA interprets the RACM provision at CAA section 172(c) to require a demonstration that the state has adopted all technologically and economically feasible measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable, and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area (*see* 80 FR 12264, 12282, March 6, 2015; and 40 CFR 51.1312(c)). For areas reclassified as Moderate, such an analysis should include an evaluation of currently available RACT for sources that emit, or have the potential to emit, 100 tons per year or more of VOC or NO<sub>x</sub>, as well as an evaluation of RACT for all sources subject to a Control Techniques Guideline (*see* CAA sections 182(b)(2)(A-C) and 182(f)).

The EPA has long taken the position that the statutory requirement for states to assess and adopt RACT for sources in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.<sup>43</sup> In addition to the independent RACT requirement, states have a statutory obligation to apply RACM and adopt such measures needed to meet RFP requirements and to demonstrate attainment as expeditiously as practicable when also considering emissions reductions associated with the implementation of RACT on sources in the area.<sup>44</sup> Therefore, to the extent that a state adopts new or additional control measures as RACT to meet RFP requirements or to demonstrate attainment as expeditiously as practicable, those states must include such RACT revisions with the other SIP elements due as part of the attainment plan required under CAA sections 172(c) and 182(b).

b. Vehicle Inspection and Maintenance (I/M)

*Background on I/M.* Motor vehicles are a major contributor of ozone precursor (VOC and NO<sub>x</sub>) emissions. I/M programs reduce these emissions by ensuring on-road motor vehicles

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<sup>43</sup> See Memo from John Seitz, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard” (1995), at 5 (explaining that Subpart 2 requirements linked to the attainment demonstration are suspended by a finding that a nonattainment area is attaining but that requirements such as RACT and I/M must be met whether or not an area has attained the standard); see also 40 CFR 51.1318 (suspending attainment demonstrations, RACM, RFP, contingency measures, and other attainment planning SIPs with a finding of attainment).

<sup>44</sup> Though not directly a part of a nonattainment area RACM analysis, the EPA has interpreted CAA section 172(c)(6) to require that air agencies also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state’s boundaries) and must require other control measures on these intrastate sources if doing so is necessary to provide for attainment of the applicable ozone NAAQS within the area by the applicable attainment date. For discussion of this “other control measures” provision see also the final rule to implement the 2015 ozone NAAQS (83 FR 63015, December 6, 2018), the Phase 2 proposed rulemaking (68 FR 32829, June 2, 2003) and final rule to implement the 8-hour ozone NAAQS (70 FR 71623, November 29, 2005), and the final rule to implement the PM<sub>2.5</sub> NAAQS (81 FR 58035, August 24, 2016).

are maintained to meet vehicle emission standards as certified, identify excessive emissions, and assure vehicle repairs.<sup>45</sup>

As mentioned in the preceding section, a Basic I/M program is a required Moderate area SIP submission element for the 2015 ozone NAAQS. The applicable Basic I/M requirements for Moderate ozone nonattainment areas are described in CAA sections 182(a)(2)(B) and 182(b)(4) and further defined in the EPA's I/M regulations (40 CFR part 51, subpart S).<sup>46</sup> Only Moderate ozone nonattainment areas in areas with a 1990 Census-defined population of 200,000 or more (urbanized areas) are required to implement Basic I/M programs (*see* 40 CFR 51.350(a)(4)).

*Areas subject to Basic I/M program requirements for the 2015 ozone NAAQS.* A Basic I/M program is required for all urbanized Moderate areas under the 2015 ozone NAAQS, including for areas with and without an existing I/M program that may have been implemented to meet the CAA requirements for a previous ozone NAAQS. Most of the Marginal nonattainment areas being proposed in this action for reclassification to Moderate under the 2015 ozone NAAQS are already operating I/M programs for a variety of reasons, including being designated nonattainment and classified as Moderate or above under a prior ozone standard and/or as part of a maintenance plan for a prior NAAQS. Consistent with the I/M regulations, states with existing I/M programs would need to conduct and submit a performance standard modeling analysis as well as make any necessary program revisions as part of their Moderate area SIP submissions to ensure that I/M programs are operating at or above the Basic I/M performance standard level for the 2015 ozone NAAQS.<sup>47</sup> States may determine through the

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<sup>45</sup> See EPA's I/M website for a fact sheet and link to the I/M regulations at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-regulations>.

<sup>46</sup> The EPA is not proposing changes to its I/M regulations in this notice; however, additional clarification in this preamble is provided to assist states with nonattainment areas subject to Basic I/M in understanding specific I/M program requirements due to being reclassified as Moderate.

<sup>47</sup> 40 CFR 51.372(a)(2). An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO<sub>x</sub>.

performance standard modeling analysis that an existing SIP-approved program would meet the performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the state could submit a SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting new revised regulations.<sup>48</sup> With the passage of time and changes in fleet mix, it is appropriate for States to confirm existing programs' compliance with the performance standard.

In addition, the EPA recognizes that there are four Marginal nonattainment areas being proposed in this action for reclassification to Moderate under the 2015 ozone NAAQS that do not currently operate an I/M program but meet the population criteria for Basic I/M programs: Cincinnati, Ohio-Kentucky; Detroit, Michigan; Louisville, Kentucky-Indiana; and San Antonio, Texas. If we finalize our action as proposed, these newly reclassified Moderate nonattainment areas would need to submit a SIP revision. Such a revision would address the Basic I/M program requirements to be fully implemented as expeditiously as practicable but no later than the implementation deadline determined by the final action reclassifying these areas as discussed in Section II.D.2.c. of this notice.

The EPA has already established the SIP elements for meeting Basic I/M program requirements. These elements will need to be detailed in a state's I/M SIP submission; the I/M regulations at 40 CFR 51.372 address I/M SIP submissions with paragraphs (a)(1)-(8) outlining the required elements. The first required element is a schedule for the I/M program implementation and interim milestones leading to mandatory testing. This list of milestones to be scheduled in the SIP includes such things as passage of enabling statutory or other legal authority; proposal of draft regulations and promulgation of final regulations; issuance of final specifications and procedures; issuance of final Request for Proposals (if applicable); licensing

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<sup>48</sup> See *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements*, 83 FR 63001-63002. Performance standard modeling is also required for Enhanced I/M programs for the 2015 ozone NAAQS in Serious and above ozone nonattainment areas for that NAAQS.

or certifications of stations and inspectors; the date mandatory testing will begin for each model year to be covered by the program; etc. (*see* 40 CFR 51.372(a)(1)).

The other seven elements that the I/M SIP will need to address include a performance standard modeling analysis of the proposed I/M program; the geographic applicability of the I/M program; a detailed discussion of each of the required design elements;<sup>49</sup> legal authority requiring or allowing implementation of the I/M program and providing either broad or specific authority to perform all required elements of the program; legal authority for I/M program operation until such time as it is no longer necessary; implementing regulations, interagency agreements, and memoranda of understanding; and evidence of adequate funding and resources to implement all aspects of the program (*see* 40 CFR 51.372(a)(2)-(8)). Not all of these I/M program SIP elements need to be established in full prior to the due date of the I/M SIP submission (*see* Section II.D.2.a. of this notice), but rather, the I/M SIP needs to establish deadlines for certain I/M program elements leading to full implementation of the I/M program as expeditiously as practicable but in no case later than the implementation deadline determined by the final action to this proposal, as discussed in Section II.D.2.c. of this notice.

*I/M and Environmental Justice.* While vehicle emissions-per-mile have decreased due to advances in vehicle emission control technology, those controls can degrade over time which can lead to excess pollution in ozone nonattainment areas. I/M programs ensure that vehicles are operating according to EPA's vehicle emissions standards and adequately protecting public health. However, any Basic I/M program for the 2015 ozone NAAQS may present potential economic hardship and other concerns for low-income individuals of newly reclassified Moderate ozone nonattainment areas. Specifically, these residents might own older, high-emitting vehicles and be less able to pay for car repairs needed as the result of a failed I/M test.

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<sup>49</sup> I/M program design elements are program features that have a direct impact on the ability of the program to reduce levels of the ozone precursors, VOC, and NO<sub>x</sub>. These design elements include test frequency (annual or biennial), waiver/compliance rate, vehicle type coverage, model year (MY) coverage, network type (centralized or decentralized), and test type (*e.g.*, idle, onboard diagnostics (OBD)).



To address this disparity in other I/M programs, some states such as Arizona, California,<sup>50</sup> and Utah<sup>51</sup> fund vehicle repair or replacement assistance. For example, the Arizona Voluntary Vehicle Repair Program provides owners of eligible vehicles with financial assistance toward the cost of repairs after a failed emissions test. Since 2018, more than 2,700 vehicles have been repaired through this program, saving Arizona motorists more than \$1.3 million and eliminating more than 560 tons of emissions.<sup>52</sup> The EPA believes the implementation of Basic I/M programs in communities with low-income individuals is an important issue. We encourage states that are not already providing such assistance programs to work with interested parties in their nonattainment areas to address such concerns.

*Basic I/M Program Design Element Considerations and Meeting the Performance Standard.* There are several program design elements described in EPA's existing I/M regulations that should be considered for Basic I/M programs.

To determine whether a given set of program design elements meets the applicable I/M performance standard, it is necessary to conduct performance standard modeling.<sup>53</sup> The performance standard for Basic I/M programs in areas designated nonattainment for the 2015 ozone NAAQS includes, among other things, annual inspections of light-duty vehicles in a centralized test program by conducting idle testing of 1968-2000 Model Year (MY) subject vehicles and on-board diagnostics (OBD) checks on 2001 and newer subject vehicles (*see* 40 CFR 51.352(e)). The EPA believes that this Basic I/M performance standard can be met by a state program that exempts 1995 MY and older vehicles from tailpipe testing by performing the

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<sup>50</sup> The California Bureau of Automotive Repair's Consumer Assistance Program offers eligible consumers repair assistance and vehicle retirement options to help improve air quality. For more information, *see* [https://www.bar.ca.gov/consumer/Consumer\\_Assistance\\_Program/](https://www.bar.ca.gov/consumer/Consumer_Assistance_Program/).

<sup>51</sup> Utah's Vehicle Repair and Replacement Assistance Program provides funding assistance to individuals whose vehicles are failing vehicle emission standards to either replace their failing vehicle with a newer, cleaner one or to repair it. For more information *see* <https://deq.utah.gov/air-quality/incentive-programs-aq/vehicle-repair-and-replacement-assistance-program>.

<sup>52</sup> For more information, *see* <https://www.azdeq.gov/node/4525>.

<sup>53</sup> *See* 40 CFR 51.372(a)(2) and 51.352.

OBD test on 1996 and newer OBD-equipped light-duty vehicles. In this case, the relatively small benefit of tailpipe idle testing is surpassed by the addition of 1996-2000 MY light-duty vehicles to the OBD testing coverage. Additional flexibilities in designing the I/M program (such as allowing newer MY exemptions, and/or permitting the testing of vehicles biennially as opposed to annually) might be realized by increasing the level of certain design elements beyond that of this Basic I/M performance standard such as the inclusion of OBD testing of light-duty trucks or increasing the Gross Vehicle Weight Range of the subject fleet.<sup>54</sup> The degree to which this Basic I/M performance standard allows for additional forms of flexibility will depend largely upon the local conditions within the I/M program area, such as the local fleet characteristics like age distribution and vehicle market share, and local meteorological characteristics. The EPA intends to provide technical assistance for Basic I/M programs under the 2015 ozone NAAQS separate from this rulemaking.

## *2. Submission and Implementation Deadlines*

### *a. Submission deadline for SIP revisions*

On August 3, 2018 (September 24, 2018, for the San Antonio, Texas, area), when final nonattainment designations became effective for the 2015 ozone NAAQS, states responsible for areas initially classified as Moderate were required to prepare and submit SIP revisions by deadlines relative to that effective date. For those areas, the submission deadlines ranged from 2 to 3 years after the effective date of designation, depending on the SIP element required (*e.g.*, 2 years for the RACT SIP, 3 years for the attainment plan with RACM and attainment demonstration, and 3 years for a Basic I/M program SIP if required). Areas initially classified as Moderate are also required to implement RACM and RACT as expeditiously as practicable but

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<sup>54</sup> Areas that intend to use I/M emission reductions for attainment or RFP SIPs, can also consider adding the testing of light-duty trucks (or other Enhanced I/M program elements) to their I/M testing regimen to increase the emission reduction benefits of I/M, especially considering the increased fraction of light-duty trucks in the local vehicle fleet over the last two decades.

no later than January 1 of the 5th year after the effective date of designations, *i.e.*, January 1, 2023, with 2023 being the Moderate area attainment year.

CAA section 182(i) provides that areas reclassified under CAA section 181(b)(2) shall generally meet the requirements associated with their new classifications “according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” The SIP submission deadlines for areas initially designated as Moderate have passed, therefore the EPA is proposing to use its discretion under CAA section 182(i) to adjust SIP submission deadlines that would otherwise apply. We recognize that the time between the anticipated effective date of reclassification and the Moderate area attainment date in 2024 (and, critically, the attainment year of 2023) is far less than the 6 years that initially designated Moderate areas have between designation and the attainment date. Given this compressed timeline, we are proposing, as discussed in more detail later, to set the SIP submission deadlines for all the various requirements for the newly reclassified Moderate areas as January 1, 2023. While not all of the “schedules prescribed in connection with” the various Subpart 2 requirements are the same (e.g., the statute provides 3 years to submit SIPs for some requirements and 2 years for others), we think coordinating the submissions with the same deadline is necessary and appropriate in this situation given the compressed timeline and the need to achieve consistency among those submissions.

With respect to the SIP requirements for Moderate areas, the “schedules prescribed in connection” with those requirements are 2 years from the effective date of designation for RACT and 3 years from the effective date of designation for an attainment plan (*see* CAA sections 182(b)(1), 181(b)(2) and 182(i)). The 2-year and 3-year deadlines that applied to areas initially designated Moderate have already passed (August 3, 2021, or September 24, 2021, for San Antonio), and we do not find it appropriate to provide deadlines of 2 and 3 years from the

effective date of a final action on this determination, either, as those deadlines would fall after the Moderate area attainment date of August 3, 2024. Given that attainment for these newly reclassified Moderate areas will be determined based on air quality monitoring data from the DV period of 2021-2023 (*i.e.*, 2023 is the attainment year, or the last calendar year of data prior to the attainment date), in order for any of the Moderate area controls to influence attainment by the Moderate area attainment date, they would need to be implemented by the beginning of the 2023 ozone season at the latest. We further recognize that the San Antonio, Texas, nonattainment area was designated later than the other areas being reclassified to Moderate, however, we are proposing that the SIP submission deadline for requirements associated with the Moderate area classification be due for all newly reclassified areas on January 1, 2023, in order to ensure consistency among submissions.

With respect to the SIP submission deadlines for RACT, the EPA's implementing regulations for the 2015 ozone NAAQS established a RACT SIP submission deadline for areas classified Moderate or higher of either 24 months from the reclassification effective date or a deadline established by the Administrator in the reclassification action using their discretion under CAA section 182(i) (*see* 40 CFR 51.1312(a)(2)(ii)). In the case of the potential newly reclassified Moderate areas addressed in this proposal, a RACT SIP submission deadline of 24 months after an anticipated 2022 effective date would fall in 2024, potentially near or after the applicable Moderate area attainment date of August 3, 2024 (September 24, 2024, for the San Antonio area). We believe it would be reasonable to instead align the SIP submission deadline for RACT with the proposed January 1, 2023, submission deadline for other Moderate area requirements, given the compressed timeline and the need to achieve consistency among those submissions as discussed previously. The EPA adopted this approach previously for Marginal areas reclassified to Moderate for failure to timely attain the 2008 ozone NAAQS, to achieve

consistency among required SIP submissions for areas facing a similar compressed timeframe between the effective date of reclassifications and the Moderate area attainment date.<sup>55</sup>

Similarly, with respect to the SIP submission deadlines for I/M, we are proposing a January 1, 2023, deadline. This is consistent with the I/M regulations which provide that an I/M SIP shall be submitted no later than the deadline for submitting the area's attainment SIP.<sup>56</sup>

#### b. RACM and RACT Implementation Deadline

With respect to implementation deadlines, the EPA's implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1312(a)(3)(i)), which corresponds with the beginning of the attainment year for initially classified Moderate areas (January 1, 2023). The modeling and attainment demonstration requirements for 2015 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312 (*see* 40 CFR 51.1308(d)). The EPA's implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification (*see* 40 CFR 51.1312(a)(3)(ii)).

In the case of the potential reclassified Moderate areas addressed in this proposal, the start of the ozone season varies among states and is either January or March for potential

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<sup>55</sup> "Final Rule – Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards" (81 FR 26697, 26705, May 4, 2016).

<sup>56</sup> 40 CFR 51.372(b)(2).

reclassified Moderate areas addressed in this proposal (*see* 40 CFR part 58, appendix D, section 4.1, Table D–3). The EPA rejected an approach that would establish variable RACM/RACT implementation deadlines corresponding to an area’s defined ozone season starting month because of the inconsistencies that such an approach would perpetuate. Instead, the EPA is proposing a consistent single RACM/RACT implementation deadline for all newly reclassified Moderate areas corresponding with the beginning of the applicable attainment year, *i.e.*, January 1, 2023. This proposed deadline is the same as the single RACT implementation deadline for all areas initially classified Moderate per 40 CFR 51.1312(a)(3) and would require implementation of any identified RACM/RACT as early as possible in the attainment year to influence an area’s air quality and 2021-2023 attainment DV. The proposed RACT implementation deadline would also align with the proposed SIP submission deadline of January 1, 2023, and ensure that SIPs requiring control measures needed for attainment, including RACM, would be submitted no later than when those controls are required to be implemented. A single deadline for the Moderate area SIP submissions and RACT implementation would also treat states consistently, in keeping with CAA section 182(i).

The EPA requests comment on requiring that RACM/RACT be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.*, January 1, 2023.

#### c. I/M Implementation Deadline

With respect to the implementation deadline for Basic I/M programs, states wishing to use emission reductions from their newly required Basic I/M program for the 2015 ozone NAAQS would need to have such programs fully established and start testing as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.*, January 1, 2023. However, given the unique nature of I/M programs, there are many challenges, tasks, and milestones that must be met in establishing and implementing an I/M program. The EPA realizes that implementing a brand new or revised I/M program on an accelerated timeline may be

difficult to achieve in practice, especially for states with no I/M programs elsewhere within their jurisdiction, so, for the states that do not intend to rely upon emission reductions from their Basic I/M program in attainment or RFP SIPs, we are proposing to allow Basic I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, explained as follows.

Under CAA section 182(i), reclassified areas are generally required to meet the requirements associated with their new classification “according to the schedules prescribed in connection with such requirements.” The I/M regulations provide just such a prescribed schedule in stating that newly required I/M programs are to be implemented as expeditiously as practicable. The I/M regulations also allow areas newly required to implement Basic I/M up to “4 years after the effective date of designation and classification” to fully implement the I/M program.<sup>57</sup> With the effective date of this notice expected to be in 2022, the implementation deadline for Basic I/M programs for the 2015 ozone NAAQS under the proposal would be in 2026. This proposed implementation deadline is beyond the Moderate area attainment date of August 3, 2024 (or September 24, 2024, for the San Antonio area). However, by proposing such a deadline for newly reclassified Moderate areas required to implement a Basic I/M program (but not needing I/M emission reductions for attainment or RFP SIP purposes), the EPA maintains that these newly required Basic I/M programs could reasonably be implemented after the attainment year ozone season (*i.e.*, after 2023) relevant to the Moderate area attainment date if reductions from an I/M program are not necessary for an area to achieve timely attainment of the 2015 ozone NAAQS. The EPA has long taken the position that, like VOC RACT, the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and

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<sup>57</sup> The I/M program implementation deadline at 40 CFR 51.373(b) states: “For areas newly required to implement Basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.” A start date for I/M programs of 4 years after the effective date of designation and classification under the 8-hour ozone standard is also cited in the Basic I/M performance standard at 40 CFR 51.352(c) and (e)(2).

higher generally exists independently from the attainment planning requirements for such areas (see RACT discussion above in Section II.D.1.a. of this notice).<sup>58</sup> Considering the numerous challenges and milestones necessary in implementing a Basic I/M program, this proposed implementation deadline of up to 4 years is reasonable.

Alternately, EPA is also seeking comment on allowing any newly reclassified areas required to implement a Basic I/M program (but not needing I/M for attainment or RFP SIP purposes) to fully implement the Basic I/M program by no later than the Moderate area attainment date of August 3, 2024 (September 24, 2024, for the San Antonio area). CAA section 182(i) also gives the EPA the discretion to adjust deadlines for reclassified areas “to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” As discussed previously, although Basic I/M is not explicitly tied to an area’s ability to achieve timely attainment, this alternate implementation deadline would more closely align with that of the other required Moderate area elements.

The EPA believes the proposed 4-year implementation deadline offers the states that will be required to implement Basic I/M due to reclassifications, if those reclassifications are finalized as proposed, the flexibility to fully implement the I/M programs on a timeline that addresses the challenges, especially for states starting new Basic I/M programs. The EPA also requests comments on aligning the I/M implementation deadline with that of the other required Moderate area elements.

### **III. Environmental Justice Considerations**

As discussed in Section II.B of this notice, the EPA proposes to grant a request for a 1-year attainment date extension for the Uinta Basin, Utah, nonattainment area and extend the August 3, 2021, Marginal area attainment date to August 3, 2022, based on our finding that the

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<sup>58</sup> John S. Seitz, Memo, “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” May 10, 1995, at 4.



state meets the two criteria under CAA section 181(a)(5) as interpreted by the EPA in 40 CFR 51.1307 and there are no particular facts or circumstances that would compel the EPA Administrator to consider information beyond the statutory criteria. To that end, the EPA conducted an EJSCREEN analysis for the area to evaluate whether communities in the Uinta Basin area may be exposed to disproportionate pollution burdens. The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN.

As discussed in Section II.D.1.b of this notice, a Basic vehicle I/M program is required for all urbanized Moderate areas under the 2015 ozone NAAQS, including for areas with and without an existing I/M program that may have been implemented to meet the CAA requirements for a previous ozone NAAQS. I/M programs ensure that vehicles are operating according to EPA's vehicle emissions standards and adequately protecting public health. However, any Basic I/M program for the 2015 ozone NAAQS may present potential economic hardship and other concerns for low-income individuals of newly reclassified Moderate ozone nonattainment areas, and we encourage states that are not already providing I/M assistance programs to work with interested parties in their nonattainment areas to address such concerns.

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:*

##### *Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This proposed rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to: (1) find that certain Marginal ozone nonattainment areas listed in Table 1 failed to attain the 2015 NAAQS by the applicable attainment date; (2) identify those areas subject to

reclassification as Moderate ozone nonattainment areas by operation of law upon the effective date of the reclassification notice; and (3) adjust any applicable implementation deadlines. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.<sup>59</sup>

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination to deny or grant a 1-year attainment date extension do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The

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<sup>59</sup> On April 30, 2018, the OMB approved EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expired on April 30, 2021, 3 years after the approval date (*see* OMB Control Number 2060-0695 and ICR Reference Number 201801-2060-003 for EPA ICR No. 2347.03). On April 30, 2021, the OMB published the final 30-day Notice (86 FR 22959) for the ICR renewal titled "Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)" (*see* OMB Control Number 2060-0695 and ICR Reference No: 202104-2060-004 for EPA ICR Number 2347.04). The ICR renewal is pending OMB final approval.

division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified tribal areas within the nonattainment areas covered by this proposed rule, that would be potentially affected by this rulemaking. Specifically, eight of the nonattainment areas addressed in this proposal have tribes located within their boundaries: Amador, California (Jackson Rancheria of Me-Wuk Indians), Berrien County, Michigan (Pokagon Band of Potawatomi Indians), Greater Connecticut, Connecticut (Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe), Northern Wasatch Front, Utah (Skull Valley Band of Goshute Indians), Phoenix-Mesa, Arizona (Fort McDowell Yavapai Nation, Gila River Indian Community of the Gila River Indian Reservation, Salt River Pima-Maricopa Indian Community of the Salt River Reservation, and Tohono O'odham Nation), San Francisco, California (Lytton Rancheria ), Uinta Basin, Utah (Ute Indian Tribe of the Uintah & Ouray Reservation), and Yuma, Arizona (Cocopah Tribe and Quechan Tribe of the Fort Yuma Indian Reservation). One of the nonattainment areas addressed in this document is a separate tribal nonattainment area (Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California).

The EPA has concluded that the proposed rule may have tribal implications for these tribes for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. As noted previously, a tribe that is part of an area that is reclassified from Marginal to Moderate nonattainment is not required to submit a TIP revision to address new Moderate area requirements. However, if the EPA finalizes the determinations of failure to attain proposed in this action, the NNSR major source threshold and offset requirements would change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Severe (Section II.D.1 of this notice), including on

tribal lands within these nonattainment areas. Areas that are already classified Moderate for a previous ozone NAAQS are already subject to these higher offset ratios and lower thresholds, so a reclassification to Moderate for the 2015 ozone NAAQS would have no effect on NNSR permitting requirements for tribal lands in those areas.

The EPA has communicated or intends to communicate with the potentially affected tribes located within the boundaries of the nonattainment areas addressed in this proposal, including offering government-to-government consultation, as appropriate.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is presented in Section II.B of this action, “Extension of Marginal Area Attainment Date,” and summarized in Section III of this action,

“Environmental Justice Considerations,” and the relevant documents have been placed in the public docket for this action.

With respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address EJ in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area’s design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area’s design value. *Id.*

#### *K. Judicial Review*

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).<sup>60</sup>

The EPA is proposing findings regarding attainment of the NAAQS in nonattainment areas within 18 states located in nine of the ten EPA regions pursuant to a uniform process and standard. The EPA is also proposing to establish SIP submission and implementation deadlines for all newly reclassified areas in the identified states using a common, nationwide method. The

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<sup>60</sup> In deciding whether to invoke the exception by making and publishing a finding that this action, if finalized, is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

jurisdictions that would be affected by this action, if finalized, represent a wide geographic area, and fall within several different judicial circuits.

If the Administrator takes final action on this proposal, then, in consideration of the effects of the action across the country, the EPA views this action to be “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this proposal, if finalized, to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).<sup>61</sup>

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<sup>61</sup> In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

## **List of Subjects**

### **40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

### **40 CFR Part 81**

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Michael Regan,**

*Administrator.*

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